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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC. 20554

In the Matter of:)
)
Idaho Public Utilities Commission) CC Docket No. 98-221
Petition for Rulemaking Pursuant to)
Section 251(h)(2) of the Communications Act)

COMMENTS OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("U S WEST") submits these comments in support of the petition filed by the Idaho Public Utilities Commission ("Idaho PUC") to treat CTC Telecom, Inc. ("CTC") as an incumbent local exchange carrier ("ILEC") pursuant to section 251(h)(2) of the Communications Act of 1934, as amended ("Act"). Section 251(h)(2) gives the Commission authority to promote competition by extending the unbundling, resale, and other obligations of section 251(c) to carriers that control market power and bottleneck facilities equivalent to those traditionally possessed by an ILEC. CTC, which will be the exclusive provider of services in a new development, is precisely such a carrier. The Commission accordingly should declare that CTC will be treated as an ILEC under section 251(h)(2) and be subject to all the relevant provisions under section 251(c). In addition, the Commission should adopt general rules requiring that LECs such as CTC be treated as ILECs.

BACKGROUND

CTC has a contract with the developer of Hidden Springs, a new community development near Boise, Idaho, to be the exclusive provider of telecommunications, cable television, and high-speed data services to the 900 homes and businesses to be located in the

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community. Accordingly, CTC will have the only local exchange network in Hidden Springs.^{1/}

U S WEST has a certificate to provide telephone service in the area around Boise, but it will have no local network and will not provide service in Hidden Springs.

I. THE COMMISSION SHOULD TREAT CTC AS AN ILEC BECAUSE CTC MEETS THE THREE CRITERIA OF SECTION 251(h)(2).

Under section 251(h)(2), the Commission is authorized to treat a LEC in the same manner as an ILEC if:

- (A) the LEC “occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by” an ILEC;
- (B) the LEC “has substantially replaced” an ILEC; and
- (C) treatment of the LEC as an ILEC “is consistent with the public interest, convenience, and necessity and the purposes” of section 251(h)(2).

47 U.S.C. § 251(h)(2). As explained below, CTC meets each of those three conditions, and the Commission therefore should declare that CTC will be deemed to be an ILEC for purposes of section 251(c) and any other relevant rules or provisions.

A. CTC Will Occupy a Position That Is Comparable to an ILEC.

The Commission has ruled that the first element of section 251(h)(2) is satisfied when a LEC occupies “a dominant position in the market.” *Guam Public Utilities Commission Petition for Declaratory Ruling concerning Sections 3(37) and 251(h) of the Communications Act*, CCB Pol. 96-18, Declaratory Ruling and Notice of Proposed Rulemaking, 12 FCC Rcd

^{1/} The only facilities U S WEST has in the geographic area to be covered by the development are two access lines used to provide service to a former school. That service has been terminated.

6925, 6940 ¶ 25 (1997) (“*Guam Ruling/Notice*”).^{2/} According to the Commission, a LEC has such a position when it is the “sole provider of local exchange and exchange access services” [in an area] and “control[s] the bottleneck local exchange network.” *Id.* at 6941 ¶ 27.

CTC plainly satisfies this element of section 251(h)(2). CTC will be the only provider of local exchange and exchange access service in the Hidden Springs development. Indeed, CTC will have the only telephone exchange network in Hidden Springs and thus will control the “bottleneck local exchange network.”

B. CTC Will “Substantially Replace” an ILEC for purposes of Section 251(h)(2)(B).

In the *Guam Ruling/Notice*, the Commission concluded that the second element of 251(h)(2) — whether the LEC has “substantially replaced” an ILEC — can be satisfied whether or not the LEC “supplants” an ILEC that previously offered service in the same area. *See id.* at 6942-43 ¶¶ 28-31. The Commission rejected “[a]n unduly literal construction” of this element, *id.* at 6944 ¶ 33, holding instead that section 251(h)(2)(B) covers instances in which a LEC “provides local exchange service to all or virtually all of the subscribers in an area that did not receive telephone exchange service from an [ILEC].” *Id.* at 6943 ¶ 31.

^{2/} In a subsequent order, the Commission summarily adopted its tentative conclusions from the *Guam Ruling/Notice*, holding that GTA should be treated as an ILEC under section 251(h)(2). *See Treatment of Guam Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers under Section 251(h)(2) of the Communications Act*, CC Docket No. 97-134, Report and Order, FCC 98-163, ¶¶ 5-6 (rel. July 20, 1998) (“*GTA Report and Order*”). Because the Commission’s analysis leading to that result is set forth most fully in the *Guam Ruling/Notice*, we refer principally to that document.

CTC satisfies this element of section 251(h)(2), as well. Because Hidden Springs is a new development, CTC will be providing telephone service in an area that previously did not receive service from an ILEC.^{3/} As the only facilities-based carrier to serve this new community, CTC will "provide[] local exchange service to all or virtually all of the subscribers in an area that did not receive telephone exchange service from an [ILEC]." *Id.* at 6943. ¶31. Moreover, even if CTC were deemed to be serving an area already "served" by U S WEST because U S WEST is an ILEC in the Boise area, CTC clearly will be "supplanting" U S WEST with respect to the Hidden Springs development: CTC will have a local exchange network in Hidden Springs, and U S WEST will not.

C. The Public Interest Demands That CTC Be Treated as an ILEC.

The Commission concluded in its *Guam Ruling/Notice* that the "public interest" element of section 251(h)(2) is satisfied when treating a LEC as an ILEC will promote competition in the local exchange and exchange access markets. *Id.* at 6947-48 ¶ 40. In the Commission's words, "Congress has declared unequivocally that promoting competition in local exchange and exchange access markets serves the public interest, convenience, and necessity." *Id.* The Commission found that treating the Guam Telephone Authority as an ILEC would serve the public interest because the Authority "appear[ed] to be the sole provider of local exchange and exchange access services" in its area and therefore had "market power, economies of density,

^{3/} The Act requires that an ILEC for an area must have "provided telephone exchange service in such area" on February 8, 1996. *See* 47 U.S.C. § 251(h)(1). U S WEST's study area in Idaho includes the geographic area to be covered by the Hidden Springs development, but the only service U S WEST has ever provided in that area, *see* note 1, *supra*, is plainly *de minimis*.

connectivity, and scale, and control of the local network comparable to that possessed by” ILECs. *Id.*

Treating CTC as an ILEC likewise would serve the public interest. As discussed above, CTC will have the only local exchange network, and will be the sole provider of telephone service, in Hidden Springs; CTL therefore will possess the same degree of market power that ILECs have. What is more, the Idaho PUC has concluded that treating CTC as an ILEC “may well be a prerequisite for the development of competition in this community.” *See* Petition for a Declaratory Ruling, filed by the Idaho Public Service Commission, Nov. 23, 1998, at 10. Thus, “failing to treat [CTC] as an incumbent LEC would stifle competition in [Hidden Springs].” *Guam Ruling/Notice*, 12 FCC Rcd at 6948 ¶ 41.

II. THE COMMISSION SHOULD ADOPT GENERAL RULES REQUIRING THAT LECs SUCH AS CTC BE TREATED AS ILECS, BUT THE COMMISSION’S CONSIDERATION OF THOSE RULES SHOULD NOT DELAY ITS DECISION REGARDING CTC.

CTC is not unique: Many competitive LECs are the sole providers of telephone service in their areas yet are not classified as ILECs under section 251(h)(1). Indeed, as local exchange competition takes root around the Nation, more and more competitive LECs will be the exclusive providers of telephone service in newly-built, fully-contained communities. The Commission therefore should expect additional requests from state public utility commissions, carriers, and the public to treat carriers such as CTC as ILECs for purposes of section 251(c). U S WEST therefore supports the Idaho PUC’s request that the Commission promulgate general rules requiring that all LECs similarly situated to CTC be treated as ILECs.

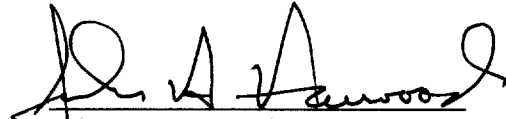
The Commission's adoption of general rules, however, should not delay its decision regarding CTC. It may take some time to develop rules of general application. In the meantime, the Commission should act favorably on the request of the Idaho PUC concerning CTC, where the facts demonstrate that CTC will be the sole provider of telephone service and will control the only local exchange facilities for a community of over 900 residents and businesses.^{4/}

^{4/} Any specific ruling with respect to CTC, and any general rules, should not foreclose the availability of the rural carrier exemption in section 251(h), to the extent that it may apply.

CONCLUSION

For the foregoing reasons, the Commission should declare that CTC will be treated as an ILEC for purposes of section 251(c) and adopt rules of general applicability governing similarly situated carriers.

Respectfully submitted,



John H. Harwood II
Lynn R. Charytan
Todd Zubler
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420
(202) 663-6000

Robert B. McKenna
John L. Traylor
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2859

Counsel for

U S WEST COMMUNICATIONS, INC.

Of Counsel

Dan L. Poole

January 11, 1999

CERTIFICATE OF SERVICE

I, Sepala W. Welivitigoda, do hereby certify that on this 11th day of January 1999, I have caused a copy of the foregoing **Comments of U S WEST Communications, Inc., on the Petition of the Idaho Public Utilities Commission** to be served either by hand delivery or by first class U.S. mail, postage prepaid, upon the parties listed on the attached Service List.

A handwritten signature in cursive script, reading "Sepala W. Welivitigoda", written over a horizontal line.

Sepala W. Welivitigoda

SERVICE LIST

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 - 12th Street, S.W., TW-A325
Washington, D.C. 20554

Janice M. Myles
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room No. 544
Washington, D.C. 20554

Alan G. Lance
Attorney General
Cheri C. Copsey
Deputy Attorney General
Idaho Public Utilities Commission
P.O. Box 83720
Boise. ID 83720-0074

International Transcription Services
1231 20th Street, N.W.
Washington, D.C. 20036